

by any person from the person's area of operations within the previous 5 years.

(ii) The person certifies as follows:

"I hereby request waiver of the requirements to brand each end of individual logs originating from the _____ timber sale, Forest Service contract number _____ pursuant to 36 CFR 223.195. I certify that I have not exported or sold for export unprocessed timber from private lands within my area of operations in five years. I certify that I understand, that if granted, the waiver applies only to unprocessed logs being processed within my area of operations. I certify that any unprocessed logs to which this waiver applies that are transferred, or sold for transfer, outside my area of operations will be branded on both ends in full compliance with 36 CFR 223.195. I make this certification with full knowledge and understanding of the requirement of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations at 36 CFR part 223. I fully understand that failure to abide by the terms of the waiver will be a violation of this Act (16 U.S.C. 620, *et seq.*) and the False Statements Act (18 U.S.C. 1001) and may subject me to the penalties and remedies provided for such violation.";

and,

(iii) The person otherwise complies with the regulations relating to transfers of logs between persons.

(iv) If the Regional Forester determines that unprocessed logs from my origin are being exported, or are known to have been exported within the previous 5 years, by any person from the person's area of operations, the Regional Forester shall revoke the waiver.

(2) *Regions 5 and 6.* On an individual timber sale basis, the branding requirement pursuant to paragraph (c)(2) of this section may be waived for logs ten (10) inches or less in diameter inside bark on the large end may be waived if:

(i) One end of each log is branded;

(ii) The person certifies as follows:

"I hereby request waiver of the requirement to brand each end of individual logs ten (10) inches or less in diameter inside bark on the large end, originating from the _____ timber sale, U.S. contract number _____ pursuant to 36 CFR 223.195. I certify that I understand, if granted, that the waiver applies only to unprocessed logs being processed at _____, and further certify that any and all unprocessed logs to which waiver would apply that are transferred, or sold for transfer, will be branded on both ends in full

compliance 36 CFR 223.195. I make this certification with full knowledge and understanding of the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101-382, August 20, 1990; 16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations at 36 CFR Part 223. I fully understand that failure to abide by the terms of the waiver will be a violation of this Act (16 U.S.C. 620, *et seq.*) and the False Statements Act (18 U.S.C. 1001) and may subject me to the penalties and remedies provided for such violation.";

and,

(iii) The purchaser otherwise complies with the regulations relating to transfers of logs between persons.

(iv) If the Regional Forester determines that logs ten (10) inches or less in diameter inside bark on the large end are being exported in the Region, the Regional Forester shall revoke the waiver.

(3) The Chief of the Forest Service may authorize the testing of alternative methods of branding for consideration in future amendment of these regulations. Such alternative methods and logs marked under those methods shall be closely monitored.

§ 223.196 Civil penalties for violation

(a) *Exporting Federal timber.* If the Secretary of Agriculture finds, on the record and after providing an opportunity for a hearing, that a person, with willful disregard for the prohibition in the Act exporting unprocessed Federal timber, exported or caused to be exported unprocessed timber originating from Federal lands in violation of the Act, the Secretary may assess against such person a civil penalty of not more than \$500,000 for each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

(b) *Other violations.* If the Secretary of Agriculture finds, on the record and after providing an opportunity for a hearing, that a person has violated any provision of the Act, or any regulation issued under the Act relating to National Forest System lands, even though that the violation may not have caused the export of unprocessed Federal timber in violation of such Act, the Secretary may:

(1) Assess against such person a civil penalty of not more than \$500,000, if the

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Secretary determines that the person committed such violation willfully;

(2) Assess against such person a civil penalty of not more than \$75,000 for each violation, if the Secretary determines that the person committed such violation in disregard of such provision or regulation; or

(3) Assess against such person a civil penalty of not more than \$50,000 for each violation, if the Secretary determines that the person should have known that the action constituted a violation.

(c) *Penalties not exclusive and judicial review.* A penalty assessed under paragraph (a) or (b) of this section shall not be exclusive of any other penalty provided by law, and shall be subject to review in an appropriate United States district court.

§ 223.197 Civil penalty assessment procedures.

Adjudicatory procedures for hearing alleged violations of this Act and its implementing regulations and assessing penalties shall be conducted under the rules of practice governing formal adjudicatory proceedings instituted by the Secretary. Such procedures are found at 7 CFR 1.130, *et seq.*

§ 223.198 Administrative remedies.

In addition to possible debarment action provided under subpart C of this part, the Chief of the Forest Service, or other official to whom such authority is delegated, may cancel any timber sale contract entered into with a person found to have violated the Act or regulations issued under the Act. Such a finding shall constitute a serious violation of contract terms pursuant to § 223.116(a)(1) of this part.

§ 223.199 Procedures for cooperating with other agencies.

The Regional Foresters may enter into agreements to cooperate with the Department of the Interior, the Department of Defense, and other Federal, State and local agencies for monitoring, surveillance and enforcing the Act.

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§ 223.200 Determinations of surplus species.

(a) Determinations that specific quantities of grades and species are surplus to domestic manufacturing needs and withdrawals of such determinations shall be made in accordance with title 5, United States Code, section 553.

(b) Review of a determination shall be made at least once in every 3-year period. Notice of such review shall be published in the FEDERAL REGISTER. The public shall have no less than 30 days to submit comments on the review.

(c) Alaska yellow cedar and Port Orford cedar, which the Secretary of Agriculture found to be surplus to domestic processing needs pursuant to 36 CFR 223.163, the rules in effect before August 20, 1990, shall continue in that status until new determinations are published.

§ 223.201 Limitations on unprocessed timber harvested in Alaska.

Unprocessed timber from National Forest System lands in Alaska may not be exported from the United States or shipped to other States without prior approval of the Regional Forester. This requirement is necessary to ensure the development and continued existence of adequate wood processing capacity in Alaska for the sustained utilization of timber from the National Forests which are geographically isolated from other processing facilities. In determining whether consent will be given for the export of timber, consideration will be given to, among other things, whether such export will:

(a) Permit more complete utilization on areas being logged primarily for local manufacture,

(b) Prevent loss or serious deterioration of logs unsalable locally because of an unforeseen loss of market,

(c) Permit the salvage of timber damaged by wind, insects, fire or other catastrophe,

(d) Bring into use a minor species of little importance to local industrial development, or

(e) Provide material required to meet urgent and unusual needs of the Nation. (16 U.S.C. 472a; 16 U.S.C. 551; 16 U.S.C. 616)